

**MINUTES FOR THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

February 25, 2005

DIVISION ONE

B173683 People (Not for Publication)
v.
Richard Dafoe

The judgment is affirmed.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.
Mallano, J.

B173150 People (Not for Publication)
v.
Marlon C. Smiley

The judgment is affirmed.

Vogel (Miriam A.), J.

We concur: Mallano, Acting P.J.
 Suzukawa, J. (Assigned)

B173598 People (Not for Publication)
v.
Ernesto Gallegos Robles

The judgment is affirmed.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.
Suzukawa, J. (Assigned)

February 25, 2005 (Continued)

DIVISION ONE (Continued)

B175263 People (Not for Publication)
v.
Oscar G. Fierro

The judgment is affirmed.

Spencer, P.J.

I concur: Suzukawa, J. (Assigned)
I concur in the judgment only: Vogel (Miriam A.), J.

B172317 People (Not for Publication)
v.
Angel L. Vega, Jr.

Defendant contends that cumulative constitutional error mandates reversal of his conviction. Inasmuch as we find no error, we reject defendant's contention. The judgment is affirmed.

Spencer, P.J.

I concur: Suzukawa, J. (Assigned)
I concur in the judgment only: Vogel (Miriam A.), J.

B176351 People (Not for Publication)
v.
Gonzalo Padilla

The judgment is affirmed.

Suzukawa, J. (Assigned)

We concur: Spencer, P.J.
Vogel (Miriam A.), J.

February 25, 2005 (Continued)

DIVISION ONE (Continued)

B169076 People (Not for Publication)
v.
Chazerae Richard

The judgment is affirmed.

Mallano, J.

We concur: Spencer, P.J.
Suzukawa, J. (Assigned)

B171436 People (Not for Publication)
v.
Patrick Wiley

The judgment is affirmed.

Mallano, J.

I concur: Spencer, P.J.
I concur in the judgment only: Vogel (Miriam A.), J.

B173853 People (Not for Publication)
v.
Steven Matthews

The conviction for count two and the true finding on the juvenile kidnapping adjudication are reversed. The matter is remanded to the trial court for the purpose of correcting the abstract of judgment and forwarding a corrected copy to the Department of Corrections. As modified, the judgment is affirmed.

Suzukawa, J. (Assigned)

We concur: Spencer, P.J.
Vogel (Miriam A.), J.

DIVISION ONE (Continued)

B173813 Marmureanu et al. (Not for Publication)
 v.
 Laks

The order is affirmed. Dr. Marmureanu is entitled to his costs of appeal.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.
 Mallano, J.

B173971 Roberson et al. (Not for Publication)
 v.
 Baeza et al.

The appeal is dismissed. The Robersons are entitled to their costs of appeal.

Vogel (Miriam A.), J.

We concur: Mallano, Acting P.J.
 Suzukawa, J. (Assigned)

B179726 Alfredo V. et al. (Not for Publication)
 v.
 Superior Court, Los Angeles County
 (Department of Children & Family Services, r.p.i.)

The petition for extraordinary writ is denied.

Spencer, P.J.

We concur: Mallano, J.
 Suzukawa, J. (Assigned)

DIVISION ONE (Continued)

B163707 Sargon Enterprises Inc. (Not for Publication)
B167519 v.
B169619 University of Southern California et al.

In B167519 (consolidated with B169619): (1) the breach of contract judgment for plaintiff, from which USC does not appeal, is a final judgment; (2) we reverse the in limine ruling excluding evidence of lost profit damages and remand for a new trial on lost profit damages; (3) we reverse the order denying plaintiff leave to amend the complaint to include fraud allegations and remand for further proceedings; (4) we reverse the order awarding USC its attorney fees as the prevailing party under Civil Code section 1717; (5) we reverse the order awarding USC its costs under Code of Civil Procedure section 998; (6) we direct the trial court on remand to award plaintiff additional costs in accordance with the views stated in this opinion; and (7) we direct the trial court on remand to award plaintiff reasonable attorney fees as the prevailing party under Civil Code section 1717. Plaintiff is awarded its costs on appeal.

In B163707, we reverse the judgment of dismissal and underlying orders sustaining the demurrer and striking the complaint. Plaintiff is awarded its costs on appeal.

Suzukawa, J. (Assigned)

We concur: Spencer, P.J.
 Mallano, J.

B171481 People (Not for Publication)
 v.
 Saravia

The judgment is affirmed.

Spencer, P.J.

I concur: Mallano, J.
I concur in judgment only: Vogel (Miriam A.), J.

February 25, 2005 (Continued)

DIVISION ONE (Continued)

[illegible]

The judgment (July 9, 2004, retraining order) is affirmed.

Suzukawa, J. (Assigned)

We concur: Spencer, P.J.
Vogel (Miriam A.), J.

B173936 People (Not for Publication)
v.
Hernandez

The judgment is affirmed.

Mallano, Acting P.J.

I concur: Suzukawa, J. (Assigned)
I concur in judgment only: Vogel (Miriam A.), J.

B173599 People (Not for Publication)
v.
Lara

The order under review is affirmed.

Mallano, J.

I concur: Spencer, P.J.
I concur in the judgment only: Vogel (Miriam A.), J.

February 25, 2005 (Continued)

DIVISION TWO

B174476 People (Not for Publication)
v.
Roger Chan Math

The judgment is affirmed.

Boren, P.J.

We concur: Nott, J.
Ashmann-Gerst, J.

B170393 Jerianne Latourelle (Not for Publication)
v.
Joseph Latourelle

The order under review is affirmed. Respondent(s) to recover costs.

Boren, P.J.

We concur: Nott, J.
Doi Todd, J.

B165509 Raymond S. Kaplan (Not for Publication)
v.
Warren L. Breslow, et al.

The judgment is affirmed. Respondent(s) to recover costs.

Boren, P.J.

We concur: Nott, J.
Doi Todd, J.

February 25, 2005 (Continued)

DIVISION TWO (Continued)

B166927 Elbert E. Royas
v.
Mercedes-Benz USA, INC., et al.

Filed order denying petition for rehearing.

B172570 Sam Saber
v.
David M. Leeper

Filed order denying petition for rehearing.

DIVISION THREE

B169233 People (Not for Publication)
v.
Jalon Marcellus Carwell

The judgment is affirmed.

Klein, P.J.

We concur: Croskey, J.
 Kitching, J.

B172380 People (Not for Publication)
v.
Medina

The judgment is affirmed.

Aldrich, J.

We concur: Klein, P.J.
Kitching, J.

February 25, 2005 (Continued)

DIVISION THREE (Continued)

B172434 People (Not for Publication)
v.
Demetrius C.

Probation condition 15 is modified to read: "Do not associate with anyone known to you to be disapproved of by parents/probation officer." Probation condition 21 is modified to read, "Do not use or possess narcotics, controlled substances, poisons, or related paraphernalia; stay away from places where you know users congregate." In all other respects, the order granting probation pursuant to Welfare and Institutions Code section 725, subdivision (a) is affirmed.

Aldrich, J.

We concur: Klein, P.J.
Kitching, J.

B178567 Nshan Ketchedjian, et al.
B180437 v.
Farmers Group, Inc. et al.

Filed order consolidating above captioned appeals.

DIVISION EIGHT

Court convened at 9:03 A.M.

Present: Cooper, P.J., Rubin, J., Flier, J. and Emma Jean Amos, Deputy Clerk.

Each of the following:

B168992 People v. Larson
B170728 People v. Thorpe
B172199 People v. Paz
B173915 DCFS v. Reginald G.
B176517 DCFS v. Sudan J.
B170934 People v. Candelario
B174074 People v. Conley
B174303 People v. Duke

DIVISION EIGHT (Continued)

Each of the following (continued):

B176948 DCFS v. Elizabeth E.
B179912 Timothy B. v. SCLA (DCFS)
B170637 People v. Russell

Argument waived, cause submitted.

B175112 People
 v.
 Usher

Merits:

Argued by Lynette Gladd Moore for appellant and by Michael R. Johnson, Deputy Attorney General for respondent. Cause submitted.

B173968 Fajardo
 v.
 Witzling

Merits:

Argued by Steven A. Silverstein for appellant and by Mark Connely for respondent. Cause submitted.

B170130 Heersema et al.
 v.
 Dave Altman's R.V. Centers, Inc.

Merits:

Argued by Gwen Freeman for appellants and by Jose-Manuel A. de Castro for respondent. Cause submitted.

DIVISION EIGHT (Continued)

B174854 Keyghobad
 v.
 Home Box Office, Inc.

Merits:
Argued by Robert C. O'Brien for appellant and by Paul Sigelman for
respondent. Cause submitted.

B165944 Howard
 v.
 Muir

Merits:
Argued by Neil M. Howard for appellant and by Donald L. Scoggins for
respondent. Cause submitted.

B171629 People
 v.
 Eason

Oral argument continued to March 25, 2005, at 9:00 a.m.

B175592 People
 v.
 Dodson

Oral argument continued to March 25, 2005, at 9:00 a.m.

B175333 Los Angeles County, D.C.S.
 v.
 David J.

Oral argument continued to April 29, 2005, at 9:00 a.m.

Court adjourned at 11:04 A.M.

February 25, 2005 (Continued)

DIVISION EIGHT (Continued)

B165085 Estate of Lillie Hammonds, Deceased (Not for Publication)
Hammonds
v.
Hernandez

The order is reversed. Appellant to recover his costs on appeal.

Rubin, J.

We concur: Cooper, P.J.
Flier, J.

B179912 Timothy B. (Not for Publication)
v.
Superior Court, Los Angeles County
(Los Angeles County Department Children & Family Services et al., r.p.i.)

The petition is denied on the merits. This opinion is final as to this court forthwith. (Cal. Rules of Court, rule 24(b) (3).)

Flier, J.

We concur: Cooper, P.J.
Rubin, J.

B169148 People
v.
Jaramillo

Filed order denying petition for rehearing.

B170874 People
v.
Diaz

Filed order modifying opinion. Petition for rehearing is denied. (No change in the judgment)

DIVISION EIGHT (Continued)

B170826 Rigaud et al. (Not for Publication)
 v.
 Harrison et al.

The judgment is affirmed in part and reversed in part. The order sustaining respondents' demurrers to the second amended complaint is affirmed. The postjudgment orders awarding contractual attorney's fees under Civil Code section 1717 and Code of Civil Procedure section 1033.5, subdivision (a) (10) are modified to reduce the total award of contractual attorney's fees to \$500, and, as modified, remanded for the trial court to apportion the award, as appropriate, between the Eisenstein and Beaumont respondents. The remainder of the postjudgment orders are reversed and remanded with directions to the trial court to (1) enter a new and different postjudgment order reflecting that Beaumont is not entitled to attorney's fees under Civil Code section 52; and (2) conduct further proceedings and make findings to determine whether either respondent is entitled to attorney's fees under Civil Code section 1942.5 and, if so, in what amount; and (3) conduct further proceedings and make written findings to determine whether Beaumont is entitled to attorney's fees under Government Code section 12965 and, if so, in what amount. Each party is to bear its or their own costs of appeal.

Boland, J.

We concur: Rubin, Acting P.J.
 Flier, J.

B170291 People
 v.
 Jorge Murguia

Filed order vacating submission order of November 30, 2004. Cause resubmitted.

February 25, 2005 (Continued)

DIVISION EIGHT (Continued)

B170291 People
 v.
 Jorge Murguia

Filed order vacating submission order of November 30, 2004. It is hereby ordered that the submission order of November 30, 2004, in the above-entitled matter, be vacated for the reasons that due to press of other court business and the complexity of the issues, additional time is needed to complete and file the opinion in the matter.. Cause resubmitted.